

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4089 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A B PATEL & OTHERS

Versus

M K PATEL, DIST. AGRICULTURE OFFICER & ORS.

Appearance:

MR HASIM QURESHI for Petitioners
MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/04/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The petitioners, in all 47, filed this Special Civil Application before this Court and prayer has been made for the issuance of a writ of mandamus or any other writ, order or direction quashing the decision of the respondent No.1, which is approved by the respondent No.3, to terminate the services of the Gram Sevaks (T & V) or from discharging their services from 31st September, 1982. Further prayer has been made by the petitioners to issue an interim relief restraining the

respondent No.1 from discharging the Gram Sevaks (T& V) or terminating their services during the pendency of this Special Civil Application.

2. On 30th September, 1982, this Special Civil Application had come up for admission on which date the Court ordered, "Notice returnable on 8-10-1982. Ad-interim relief in terms of Para No.11(B) pending admission." On 28th January, 1983, rule was issued and interim relief was ordered to be continued.

3. It is not in dispute that all the petitioners are continuing in service under the interim relief granted by this Court. It is also not in dispute that the petitioners are serving as Gram Sevaks (T & V) in the Kheda District Panchayat since January, 1980. The initial appointments of the petitioners were made purely on urgent and temporary basis though after calling their names from the Employment Exchange. So it is a case where the temporary appointments of the petitioners have been made though after selection, but their appointments were not regular appointments as admittedly the selection was to be made by the Kheda District Panchayat Selection Committee.

4. In the month of June, 1980, 237 posts of Gram Sevaks (T & V) were advertised. The petitioners except the petitioner No.1 submitted their applications in response to the said advertisement. They were interviewed along with others and names of 336 persons were placed in the select list. This selection has been challenged by filing several petitions before this Court. Reference in this respect may have to one of the Special Civil Applications No.2550/81. This petition came to be accepted by this Court and the selection has been quashed and set aside. The judgment of this Court is reported in 23 (2) GLR 22. The operative part of the judgment of this Court given in the aforesaid case is reproduced by the petitioners in Para No.6 of this Special Civil Application.

5. The fresh selection has been held by the Kheda District Panchayat Selection Committee which has been completed on 22nd July, 1982. The select list of 308 candidates including the names of the petitioners except the petitioner No.1 was prepared. The petitioners except the petitioner No.1 having the apprehension of the termination of their services approached this Court by filing this Special Civil Application.

6. The reply to this Special Civil Application has

been filed and it is not dispute that the fresh select list prepared by the District Panchayat Selection Committee included the names of the petitioners. The respondents very conveniently failed to give out any fact whatsoever what they did with the select list which has been prepared by the District Panchayat Selection Committee after the decision of this Court reported in 23 (2) GLR 22. In para no.6 of the reply, the reasons have been given out for the termination of the services of the petitioners except the petitioner No.1, that they were temporarily appointed as Gram Sevaks after selection by the local committee, a composition whereof is entirely different from the District Panchayat Service Selection Committee, which is a statutory body. The select list prepared by the local committee was not recognised by the Government. The persons appointed by the said Committee cannot be considered to be regularly selected Panchayat servants. After the select list is prepared by the District Panchayat Service Selection Committee is available, the persons who were temporarily appointed on a selection made by the local committee cannot be continued in service. It has further been stated that the appointments from the select list, prepared by the District Panchayat Service Selection Committee, had to be given according to the order of merit in the select list.

7. So the appointments were to be made from the select list and to absorb the selectees, the temporary appointees have to make a room for them. But in case the name of the petitioners are there in the select list at sufficiently higher number in the merit and any person lower in merit then the petitioners has been given the appointment then certainly the termination of their services may not be justified. They should have been continued in service. On these major facts, the respondents have conveniently remained silent. The petitioners can be continued in service only in case they stand in merits and in case they do not stand in merits then they have to make a room for the selected candidates. This exercise has to be undergone by the respondents with reference to the availability of the posts on merit number of the petitioners, which has not been done in the present case. The respondents have felt contended by giving a vague reply. It is not the case of the respondents that the petitioners, except the petitioner No.1, do not come in the merit, and as such, their services have to be terminated. However, it is also not the case of the petitioners that any person who is lower in merit has been given the appointment and their services are sought to be terminated. In the presence of the vagueness of the pleadings on both the

sides, it is difficult to give a final verdict in the matter. But in view of the admitted fact that the petitioners' names are there in the select list and the fact that the petitioners are working on the post for all these years under the interim relief granted by this Court, the interest of justice will be met in case this petition is disposed of with the direction to the respondents to consider that in case the petitioners are in the merit list to the extent of availability of the posts at the relevant time then their services may not be terminated. In case the petitioners number in the merit list exceeds the number of the vacancies and further in case any of the persons lower in merit than the petitioner has not been given the appointment then in that case their services can be terminated, but only after given them an opportunity of hearing, and not otherwise.

8. In the result, this Special Civil Application is disposed of in the aforesaid terms with no order as to costs. Rule stands disposed of accordingly.